

VII

58-SBE-044
12/8/58

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
CLARY CORPORATION)

Appearances:

For Appellant: R. D. Masters, Chief Accountant

For Respondent: Burl D. Lack, Chief Counsel; John
S. Warren, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board in **denying** the claim of Clary Corporation for refund of franchise tax in the amount of \$1,492.89 for the income year 1950,

Appellant filed its franchise tax return for 1950 on May 15, 1951, having received a two-month extension of the due date. Ordinarily a **deficiency assessment** by the Franchise Tax Board or a claim for refund by the Appellant would have been barred after May 15, 1955 (see Sections 25663 and 26073 of the Revenue and Taxation Code). But on May 6, 1955, Appellant executed a waiver extending to November 15, 1955, the time within which the Franchise Tax Board could propose an additional assessment,

On November 15, 1955, a notice of proposed assessment of additional tax was issued. Appellant filed a protest in January, 1956, which led the Franchise Tax Board to reconsider the assessment. Attached to the protest was a computation of overpayment for the year in question. Appellant filed a formal claim for refund of \$1,492.89 on March 14, 1956. In December, 1956, the Franchise Tax Board withdrew its assessment but disallowed the claim for refund on the ground that the time for **filing** such a claim expired on November 15, 1955, as provided in Section 26073a of the Revenue and Taxation Code. In subsequent correspondence the Franchise Tax Board **agreed** that Appellant had made an overpayment of \$1,607.85 for the year 1950 but maintained its position that a refund could not be made,

Appeal of Clary Corporation

Section 26073a provided, in part:

"If ... the taxpayer has ... agreed in writing ... to extend the time within which the Franchise Tax Board may propose an additional assessment, ... the period within which a claim for credit or refund may be filed, or credit or refund allowed or made if no claim is filed, shall be the period within which the Franchise Tax Board may make an assessment,.. • 11

This section compels the conclusion that November 15, 1955, the last day on which the Franchise Tax Board could have made any assessment, was also the last day on which Appellant could have filed a timely claim for refund of the franchise tax for the income year 1950. Since such a claim was not filed, a refund would be unauthorized.

Appellant contends that it could not determine the amount of refund to which it was entitled until after settlement of issues in dispute which gave rise to the notice of proposed assessment. Aside from the fact that the statute makes no exception for such a situation, it appears to us that Appellant had ample time prior to November 15, 1955, to discover whether it had made an overpayment on its return for 1950 and to decide for itself the amount to which it was entitled.

O R D E R

Pursuant to the views expressed in the Opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 26077 of the Revenue and Taxation Code,. that the action of the Franchise Tax Board in denying the claim of Clary Corporation for refund of franchise tax in the amount of \$1,492.89 for the income year 1950, be and the same is hereby sustained.

Appeal of Clary Corporation

Done at Sacramento, California, this 7th day of November, 1958, by the State Board of Equalization.

Geo. R. Reilly, Chairman

J. H. Quinn, Member

Robert C. Kirkwood, Member

Robert E. McDavid, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary